

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:10-cr-127

v.

HON. ROBERT HOLMES BELL

LESLIE CLARK,

Defendant.

MEMORANDUM OPINION AND ORDER

Defendant Leslie Clark has filed a motion for modification or reduction of sentence (ECF No. 150) pursuant to 18 U.S.C. §3582(c)(2) on the basis of Amendment 782 of the United States Sentencing Guidelines, made retroactive by the Sentencing Commission. The Court has reviewed defendant's motion, the Sentence Modification Report, submissions by counsel on behalf of the defendant and the government, and the original criminal file. The Court has determined that the motion should be denied.

Defendant was sentenced on October 1, 2010, to a term of custody of 72 months following the granting of a 3-level downward departure based on defendant's substantial assistance, as well as a variance to reflect defendant's vulnerability. The 72-month sentence was well below the original guideline range of 121 - 151 months.

Pursuant to the Sentence Modification Report, the defendant's amended guideline range is 97 - 121 months. Applying the 3-level substantial assistance departure given at the time of the original sentencing, the range would then be 70 - 87 months. Although the Court originally granted

a variance, Application Note 3 of USSG § 1B1.10 states that a Court may not reduce the defendant's sentence below the new amended sentencing guideline range based upon variances or departures, unless the departure is based on a substantial assistance motion brought by the government.

It appears from a review of defendant's response to the sentence modification report that defendant was recently transferred to KPEP for completion of this sentence. It further appears defendant's projected release date is January 2016.

The Court in its discretion will DENY defendant's motion (ECF No. 150). The Court finds that the short amount of time left on defendant's sentence is best spent at KPEP where he can be provided the tools to begin to acclimate himself for release to supervised release.

Dated: October 1, 2015

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

UNITED STATES DISTRICT JUDGE